

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

Rates for Interstate Inmate Calling Services

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) WC Docket No. 12-375
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OPPOSITION TO PETITIONS FOR STAY

Network Communications International Corp. (“NCIC”)¹ submits this opposition to the following petitions: (1) Petition for Stay Pending Judicial Review of Order on Reconsideration, filed by the State of Indiana, *et al.* (“State and Local Petitioners”); (2) Petition for Stay Pending Judicial Review, filed by Global Tel*Link (“GTL”); (3) Petition for Stay Pending Judicial Review, filed by Telmate, LLC; and (4) Petition for Partial Stay of Order on Reconsideration Pending Appeal, filed by Securus Technologies, Inc (collectively the “Petitions”). The Petitions request that the Federal Communications Commission (“FCC”) stay the effectiveness of changes made to the Inmate Calling Service (“ICS”) rates contained in the Order on Reconsideration (“Recon Order”) adopted August 4, 2016, and released on August 9, 2016, in this proceeding.

The Petitions should be denied because the Petitioners fail to satisfy the *Va. Petroleum Jobbers* test.² Specifically, the Petitioners wrongly contend that: (i) they will likely prevail in a future judicial review of the new ICS rate caps; (ii) they will suffer irreparable harm from the

¹ NCIC, based in Longview, Texas, was established in 1995 and provides inmate calling services in the United States and 12 other countries. In the United States, NCIC provides direct and wholesale services to more than 600 city, county, parish, and state jails in 43 states.

² *Va. Petroleum Jobbers ASS’n v. FPC*, 259 F. 2d 921 (D.C. Cir. 1958).

implementation of new ICS rate caps; (iii) other interested parties will not be substantially harmed if the stay is granted; and (iv) the public interest favors granting a stay.³

DISCUSSION

I. The Petitioners Will Not Be Successful On The Merits And Will Not Suffer Irreparable Harm

The Petitioners assert that the amended, higher rate caps are still below their costs, and that they will not be fairly compensated and will suffer irreparable financial harm if the rates are implemented.⁴ For example, Securus asserts that the amended rates are essentially the same as those in the 2015 ICS Order, and that they merely add “unenforceable lip service” to facility costs.⁵ However, far from being “lip service,” the new rate caps are as much as 41 percent higher than the rates in the 2015 ICS Order. They are also much higher than many existing state rate caps.

Securus also argues that the “rates are below Securus’s costs of service – calculated, at the FCC’s instruction, without considering the cost of site commissions – which average \$0.1776 per minute.”⁶ However, Securus recently won a contract with the Georgia Department of Corrections (“DOC”) with a March 1, 2016, bid that offered pre-paid collect and debit rates at \$0.11 per minute for interstate and intrastate calls. These rates are *below* the rate caps in the Recon Order.⁷ The bid also contained a 59.6 percent site commission and a \$4 million bonus.⁸

³ *Id.*

⁴ Securus Petition, p. 6; GTL Petition, pp 18-20; Telmate Petition, pp. 6-8.

⁵ Securus Petition, p. ii; *See Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd. 12763 (2015) (“2015 ICS Order”).

⁶ Securus Petition, p. 6.

⁷ Securus Technologies, *Revenue Share Proposal – Best and Final Offer*, Proposal No. 46700-DOC0000669, GA Dept. of Corrections at 5 (March 1, 2016) available at <http://ssl.doas.state.ga.us/PRSapp/bid-documents/164670046700-GDC0000669198892.pdf>.

⁸ *Id.*

The bid undermines the ICS carrier-Petitioners' warning of financial ruin, and the State and Local Petitioners' argument that they will "lose millions," if the rate caps are implemented.⁹

Securus also fails to include ancillary fee revenue in its estimated average cost per minute of \$0.1776. These fees, which are used to cover overhead expenses such as credit card transaction fees, customer service, labor costs, collections, are not shared with facilities. Based on NCIC's experience, the per-minute value of ancillary fees are \$0.03 - \$0.10 per minute using the Commission's new ancillary fee structure. As a result, a more accurate approximation of the average cost per minute of the amended rate caps should include a \$0.05 increase. Therefore, for example, the average cost per minute for jails with 0-349 inmates would be \$0.36 per minute instead of \$0.31 per minute, and the average cost per minute for prisons would be \$0.18 per minute instead of \$0.13 per minute.

The Petitioners also fail to address the stimulation of calls and minutes that result from lower per minute rates in their predictions of financial harm. Indeed, Securus fails to mention its own press release in which it touted volume and minute increases of 260 percent at a correctional facility it took over from GTL.¹⁰ In it, Securus explained that "Volume increases in the 20% to 30% range are not that uncommon when providers change, usually due to lower rates. But this is significant."¹¹ Similarly, NCIC sees call and minute increases of 50 percent to 300 percent after reducing rates.¹² These increases reduce the average ICS providers' costs per minute because there are typically no significant increases in equipment costs.

⁹ State and Local Petition, p. 7.

¹⁰ NCIC Press Release (April 14, 2016) available at <http://www.prnewswire.com/news-releases/securus-smashes-record-of-completed-calls-processed-by-previous-provider---260-increase-since-securus-took-the-account-300251829.html>.

¹¹ *Id.*

¹² For example, in February 2016, after displacing a competitor at Brazos County Jail in Texas, and lowering rates to \$0.16 per minute, NCIC experienced an inmate calling increase of 247 percent.

II. A Stay Will Harm Third Parties And The Public Interest

The Petitioners argue that, because a stay of the Recon Order would preserve the status quo, third parties and the public interest would not be harmed.¹³ This argument presumes that the status quo is not harmful. To the contrary, the status quo, in which ICS consumers pay excessive rates of up to \$14.99 for a single phone call,¹⁴ is a very real and quantifiable harm. The Petitioners, who focus a great deal on the “irreparable” financial losses that *they* will allegedly suffer should the rate caps be implemented, do not directly address the irreparable financial harm of high calling rates to consumers. Their avoidance of the issue is telling.

The Petitioners also avoid discussion of the broader societal impact of high ICS rates. The vast majority of inmates will rejoin society, which makes rehabilitation a vital function of the correctional system. Without rehabilitation, the correctional system is simply a place to warehouse people until they rejoin our communities. Communication with loved ones promotes rehabilitation.¹⁵ As a result, encouraging inmate communication with loved ones through reasonable rates for communications services is a crucial part of the rehabilitation process.¹⁶ Every day that inmates are unable to connect with their loved ones due to excessive calling rates is a day that harms those inmates, their loved ones, and the public interest.

¹³ State and Local Petition, p. 8; Telmate Petition, p. 8-9; Securus Petition, p. 8.

¹⁴ 2015 ICS Order ¶ 158.

¹⁵ See 2015 ICS Order, Clyburn Statement at 195.

¹⁶ See 2015 ICS Order ¶¶ 3-5.

CONCLUSION

The Petitioners have failed to establish that: (i) they will likely prevail in a future judicial review of the new ICS rate caps; (ii) they will suffer irreparable harm from the implementation of new ICS rate caps; (iii) third parties will not be substantially harmed if the stay is granted; and (iv) the public interest favors granting a stay. The Petitions should therefore be denied.

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CERTIFICATE OF SERVICE

I hereby certify that, on September 14, 2016, the forgoing Opposition was served via electronic mail on the following persons:

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